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A Penny for Your Thoughts: Free Speech and Paying Fines with Coins

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A PENNY FOR YOUR THOUGHTS: FREE SPEECH AND PAYING FINES WITH COINS

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I. INTRODUCTION

In October 2016, the city of Springfield, Illinois encroached on the First Amendment rights of its citizens and hardly anyone noticed. The City Council approved an ordinance that significantly limits the rights of citizens to pay debts owed to the city with coins.[1] Specifically, the new law provides that "[c]ash payments [to the City] may be limited to no more than $20 in coinage of which not more than $5 may be in pennies. Overpayments will be applied to any existing debt if applicable."[2]

Municipalities may be inconvenienced when citizens use coins to pay their fines or taxes, but legislation to prevent citizens from doing so runs afoul of the U.S. Constitution. This essay is a reminder of how easily First Amendment rights can be forgotten.

II. FREE SPEECH AND PROTEST

One of the rights American citizens hold most dear is the right to freedom of speech. Since the Bill of Rights was ratified, individuals in our country have shared ideas, made statements, and engaged in protests with the knowledge that the government could not infringe upon their right to say what they want.[3] Of course, over time, modest restrictions have been placed on the right to speak out as one may desire,[4] but the fundamental protection

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1. *See New law in Springfield bans paying fines with too many coins*, QCONLINE.COM (Oct. 20, 2016, 4:35 PM), https://qconline.com/news/illinois/new-law-in-springfield-bans-paying-fines-with-too-many/article_b3e6c990-962d-11e6-87d4-b32d7d8ac51d.html.

2. SPRINGFIELD, ILL., CODE OF ORDINANCES ch. 37, art. II, § 37.19 (2016).

3. *See, e.g.*, Emma Hansen, *The Bill of Rights and Me*, 28-JUN VT. B.J. 71 (2002); Mary C. Ambacher, Note, *Bare-Naked Ladies (And Gentlemen): Analyzing Protection of Nude Protesting under the First Amendment and State Constitutions*, 47 SUFFOLK U. L. REV. 331 (2014).

4. "Speech is often provocative and challenging . . . [but it] is nevertheless protected against censorship or punishment, unless shown likely to produce a clear and present danger

afforded by the First Amendment remains sacrosanct: "Congress shall make no law . . . abridging the freedom of speech . . . ."[5]

There are also a few instances where the government may restrict speech, but those circumstances are few and far between as well. For example, the government, as an employer, may discipline a government employee for speech made within the scope of public employment.[6] Likewise, when the government acts as a K-12 educator, student speech may be restricted.[7] The government may regulate the speech of inmates if the government is the controller of prisons,[8] and the government may also regulate the speech of members of the military[9] and members of the bar.[10]

Limitations on free speech are abhorred even if the "speech" is nonverbal.[11] Indeed, the United States Supreme Court, in *Citizens United v. FEC*, reaffirmed that the expenditure of money—in the form of campaign ads—is protected speech.[12] Moreover, within the *Citizens United* opinion, the Court quoted from Justice Anthony Kennedy's dissent in an earlier First-Amendment case to underscore its point:

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of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest." Terminiello v. Chicago, 337 U.S. 1, 4 (1949); Whitney v. California, 274 U.S. 357, 376 (1927) ("To justify suppression of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced . . . [,] to believe that the danger apprehended is imminent . . . [, and] to believe that the evil to be prevented is a serious one."), *overruled by* Brandenburg v. Ohio, 395 U.S. 444 (1969). *See also* Barboza v. D'Agata, 151 F. Supp. 3d 363 (S.D.N.Y. 2015). *But see, e.g.*, Harper & Row v. Nation Enters., 471 U.S. 539 (1985) (restrictions on speech because of intellectual property rights); New York v. Ferber, 458 U.S. 747 (1982) (child pornography is not protected speech); Chaplinski v. New Hampshire, 315 U.S. 568 (1942) (fighting words may not be protected).

5. U.S. CONST. amend. I, cl. 3.

6. Garcetti v. Ceballos, 547 U.S. 410 (2006).

7. Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503 (1969).

8. Thornburgh v. Abbott, 490 U.S. 401 (1989).

9. Parker v. Levy, 417 U.S. 733 (1974).

10. EUGENE VOLOKH, FIRST AMENDMENT AND RELATED STATUTES: PROBLEMS, CASES AND POLICY ARGUMENTS 476 (3d ed. 2008).

11. *See, e.g.*, Spence v. Washington, 418 U.S. 405 (1974) (attaching a peace sign to a U.S. flag is protected speech); Tinker v. Des Moines Indep. Cmty. Sch. Dist., 393 U.S. 503, 505 (1969) (wearing black armbands to school is "closely akin to pure speech"); United States v. O'Brien, 391 U.S. 367 (1968) (reinstating the conviction of a defendant who burned his draft card and claimed that the law prohibiting such conduct violated his First Amendment right to free speech); Ronnie Schreiber, *Driver Sues Cops After Being Arrested for Insulting Language On Ticket Payment Form*, THE TRUTH ABOUT CARS (June 20, 2013), http://www.thetruthaboutcars.com/2013/06/driver-sues-cops-after-being-arrested-for-insulting- language-on-ticket-payment-form/ (People v. Barbosa (Town of Fallsburg Justice Court), "Decision" of Justice Ivan Kalter, March 22, 2013, concerning a defendant who signed a traffic payment correspondence with the words "FUCK YOUR SHITTY TOWN BITCHES" written across the top and was charged with Aggravated Harassment, but the judge dismissed the charges as protected speech).

12. Citizens United v. FEC, 558 U.S. 310 (2010).

> The First Amendment underwrites the freedom to experiment and to create in the realm of thought and speech. Citizens must be free to use new forms, and new forums, for the expression of ideas. The civic discourse belongs to the people, and the Government may not prescribe the means used to conduct it.[13]

Likewise, in *Clark v. Community for Creative Non-Violence*, the U.S. Supreme Court stated:

> Expression, whether oral or written or symbolized by conduct, is subject to reasonable time, place, or manner restrictions. We have often noted that restrictions of this kind are valid provided that they are justified without reference to the content of the regulated speech, that they are narrowly tailored to serve a significant governmental interest, and that they leave open ample alternative channels for communication of the information.[14]

Whether an activity is constitutionally-protected "speech" requires "an analysis of whether the 'speech is of public or private concern, as determined by all the circumstances of the case,' including whether the challenged activities take place in a traditional public forum."[15] At the heart of the First Amendment's protection is speech that deals with "matters of public concern," which means speech that can be reasonably considered as relating to any matter of political, social, or other concern to the community.[16] When a citizen pays a fine or a tax to a municipality and uses coins, case law and news accounts suggest that the action is an act of protest; the citizen is clearly addressing a matter of "political concern" to the community in his or her own individual way.[17] As a form of protest, political protests should be permitted "unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance, or unrest."[18]

Protests, like the type the City of Springfield seeks to end with its ordinance, do occur in other cities and do not face significant opposition

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13. *Id.* at 372, (quoting McConnell v. FEC, 540 U.S. 93, 341 (2003) (Kennedy, J., dissenting)).

14. Clark v. Cmty. for Creative Non-Violence, 468 U.S. 288, 293 (1984).

15. City of Keene v. Cleaveland, 167 N.H. 731, 739, 118 A.3d 253, 259 (2015) (quoting Snyder v. Phelps, 562 U.S. 443, 451 (2011)). The *Snyder* Court continued its analysis by explaining, "[S]peech on matters of public concern . . . is at the heart of the First Amendment's protection. . . . That is because 'speech concerning public affairs is more than self-expression; it is the essence of self-government.'" 562 U.S. at 451–52 (alteration in original) (citations omitted) (citing Garrison v. Louisiana, 379 U.S. 64, 74–75).

16. *Cleaveland*, 167 N.H. at 739, 118 A.3d at 259.

17. *See e.g.,* Connick v. Myers, 461 U.S. 138, 146–50 (1983) (describing what constitutes speech that touches on a public concern).

18. Terminiello v. Chicago*,* 337 U.S. 1, 4 (1949).

from the government. In Frisco, Texas, a citizen contested a ticket he received for going nine miles over the posted speed limit.[19] He lost his challenge and was fined $212, which he paid with pennies.[20] As icing on the cake, the man painted on the buckets that he used to carry the pennies the words "Extortion Payment."[21] The Frisco Municipal Court accepted the payment, but staffers were required to expend approximately three hours to count the coins.[22] In Lebanon, Virginia, a man paid $2,978.14 in vehicle taxes to the Department of Motor Vehicles with 298,745 pennies, which weighed 1,548 pounds; the coins were delivered in five wheelbarrows.[23] The Department's employees needed nearly twenty-four hours to count the change by hand.[24]

The ability to pay governmental agencies using U.S. currency is covered by the Coinage Act of 1965.[25] The law provides that "United States coins and currency (including Federal reserve notes and circulating notes of Federal reserve banks and national banks) are legal tender for all debts, public charges, taxes, and dues."[26] The U.S. Treasury Department website explains: "This statute means that all United States money as identified above are [sic] a valid and legal offer of payment for debts when tendered to a creditor."[27] Municipalities should accept the payment of fines in coins, primarily because U.S. coins are legal tender.[28] There is no provision in the statute that permits government agencies (federal, state, or local) to reject payments made with coins; [29] however, that is exactly what the City of Springfield has done.[30]

The First Amendment does not end at the city treasurer's door just because the refusal to accept coins as payment for fines is intended "to stop stuff that's unnecessary."[31] To pay a fine with coins is one of the few legal

19. Tony Marco, *Texas Man Pays $212 Traffic Ticket in Pennies*, CNN (Mar. 7, 2017, 1:06 PM), http://www.cnn.com/2016/05/31/us/traffic-ticket-paid-with-buckets-of-pennies-trnd.

20. *Id.*

21. *Id.*

22. *Id.*

23. Elyse Wanshel, *Man Paid DMV with 298,745 Pennies in Pettiest Revenge Scheme Ever*, HUFFPOST (Aug. 15, 2017, 1:51 PM), http://www.huffingtonpost.com/entry/man-pays-dmv- pennies_us_5879101ce4b0e58057fe80d7.

24. *Id.*

25. 31 U.S.C. § 5103 (2016).

26. *Id.*

27. U.S. DEPT. OF THE TREASURY, RESOURCE CENTER: LEGAL TENDER STATUS (Jan. 4, 2011, 4:47 PM), https://www.treasury.gov/resource-center/faqs/Currency/Pages/legal-tender.aspx.

28. *Id.*

29. *See supra* note 25.

30. *See supra* note 2.

31. QCONLINE.COM, *supra* note 1.

ways one can express dissatisfaction with the underlying law that gave rise to the fine or protest a process that the fine-payer may deem unfair. Any other method of protest is very likely to be deemed as unacceptable in our society and could lead to additional fines or worse.[32] More importantly, the U.S. Supreme Court has repeatedly recognized "that a principal 'function of free speech under our system of government is to invite dispute. It may indeed best serve its high purpose when it induces a condition of unrest, creates dissatisfaction with conditions as they are, or even stirs people to anger.'"[33]

In *Keene v. Cleaveland*, the City of Keene, New Hampshire filed suit against parking- meter-enforcement protestors for tortious interference with contractual relations, negligence, and civil conspiracy, and requested preliminary and permanent injunctive relief; all claims were dismissed by the trial court.[34] The Supreme Court of New Hampshire reversed and remanded the dismissal of the equity claims, but upheld the dismissal of the other claims.[35] In ruling in favor of the protestors, the court concurred with their argument that "'absent acts of significant violence,' the First Amendment protects their non-verbal acts from tort liability."[36]

In *State v. Carroll*, the Court of Appeals of Ohio was asked to review a finding that a defendant was in contempt of court for attempting to pay a fine with unrolled pennies, in part, because the court clerk refused to accept unwrapped coins.[37] The defendant asserted that his goal was not to mock the judicial process, but rather, "I thought it was my American right to pay with American currency in legal tender, and, secondly, in protest to the verdict of

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32. *See, e.g.*, Castano v. Gabriel, 60 Misc. 2d 218, 302 N.Y.S.2d 943 (N.Y. Civ. Ct. 1969) ("The naked assertion of 'under protest' does not imply or establish that the act performed was under any compulsion. It is merely an assertion that what is being done is contrary to the desire or intent of the protesting party . . . ." (citing Matthews v. William Frank Brewing Co., 26 Misc. 46, 55 N.Y.S. 241 (Sup. Ct. N.Y. 1899))). *See also* Emma Stefansky, *James Cromwell Sentenced to Jail for Refusing to Pay an Environmental Protest Fine*, VANITY FAIR (July 2, 2017, 12:07 PM), https://www.vanityfair.com/Hollywood /2017/07/james-cromwell-jail-time-protest-fine (actor jailed for refusing to pay a fine); Mark Molloy, *Mayor Who Tried to Pay $4K Fine with 360,000 Coins Sued by Ethics Committee*, TELEGRAPH (Nov. 20, 2015, 1:13 PM), http://www.telegraph.co.uk/news/ worldnews/northamerica/usa/12007752/Mayor-who-tried-to-pay-4k-fine-with-360000-coins-sued-by-ethics-committee.html (mayor, who knew that ethics commission accepted only checks, delivered coins as payment for a fine imposed by the commission and had his fine doubled as a result of his unethical behavior).

33. Texas v. Johnson, 491 U.S. 397, 408–09 (1989) (quoting Terminiello v. Chicago, 337 U.S. 1, 4 (1949)).

34. 167 N.H. at 733, 118 A.3d at 255.

35. *Id*. at 744, 118 A.3d at 263.

36. *Id.* at 740, 118 A.3d at 260.

37. State v. Carroll, No. 96CA2236, 1997 WL 118064, at *1 (Ohio Ct. App. Mar. 13, 1997).

the trial and the way that it went."[38] The lower court not only found the defendant in contempt for failing to pay the original fine, but also for attempting to obstruct the duties of the clerk, and sentenced the defendant to 130 hours imprisonment in the county jail.[39] The Court of Appeals of Ohio set aside the contempt order, but held that the clerk was reasonable to require loose coins to be wrapped and therefore was not required to accept loose coins.[40] Interestingly, the court did not rule that the clerk's refusal to accept coins was acceptable; the court simply stated that the clerk's requirement that loose coins be wrapped was reasonable.[41]

It is hard to concoct a credible argument to support the absolute refusal to accept coins as payment of a fine. Indeed, the City of Springfield's Treasurer told reporters that the new ordinance's wording is "flexible" to accommodate a citizen whose only method of payment is with coins.[42] However, the language of the ordinance does not provide a clear exception. It reads, "Cash payments *may* be limited to no more than $20 in coinage of which not more than $5 *may* be in pennies. Overpayments will be applied to any existing debt if applicable."[43] The word "may" in the ordinance might be sufficient to persuade the Treasurer that the ordinance may be flexibly

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38. *Id.*

39. *Id*.

40. *Id*. at *4. However, one judge wrote a concurring opinion and issued a stinging rebuke to the defendant:

> I concur in both the judgment and the opinion. I write separately to emphasize that appellant's actions in this case have resulted in an inexcusable waste of time and judicial resources.
>
> Appellant seeks to voice his displeasure with his disorderly conduct conviction. Appellant stated that his purpose in tendering the pennies for satisfaction of the fine and court costs was "in protest to the verdict of the trial and the way it went. I thought I was not given a fair trial."
>
> Obviously, appellant is displeased with his conviction for disorderly conduct. I fully recognize and understand that many litigants are displeased and frustrated with the outcome of cases in which they are involved. Appellant's remedy, however, as pointed out to him by the trial court judge, was to appeal the trial court's judgment. Appellant failed to appeal the judgment. Rather, appellant engages in conduct that he believes will burden the court and the clerk's office in carrying out their official duties.
>
> In short, I am sure that everyone involved in this useless exercise, including appellant, could be using their time more efficiently and effectively. All of us have more important matters that require our attention.

Id. at *5.

41. *Id.* at *4.

42. *See* QCONLINE.COM, *supra* note 1.

43. SPRINGFIELD, ILL. CODE OF ORDINANCES, ch. 37, art. II, § 37.19, (2016) (emphasis added).

applied, but the language does not give a citizen enough information to know whether his or her payment will be accepted.[44]

III. VOID FOR VAGUENESS

Because First-Amendment freedoms, like the freedom of speech, are fundamental personal rights, the law must safeguard these rights "to the ends that men may speak as they think on matters vital to them and that falsehoods may be exposed through the processes of education and discussion is essential to free government."[45] Accordingly, a law must be sufficiently clear to place individuals on notice of what they can or cannot do and that same law must not place excessively unfettered discretion in the hands of the governmental body applying the law.[46] Stated another way, "[the void-for-vagueness] doctrine determines, in effect, to what extent the administration of public order can assume a form which, first, makes possible the deprivation sub silentio of the rights of particular citizens and, second, makes virtually inefficacious the federal judicial machinery established for the vindication of those rights."[47]

Although vagueness arguments are often coupled with overbreadth arguments, this article uses the terms interchangeably, in part, for convenience and, in part, because the two concepts address a common problem—laws that contain ambiguous language.[48] Like overbreadth

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44. *See* United States v. Reese, 92 U.S. 214, 220 (1875) ("If the legislature undertakes to define by statute a new offence, and provide for its punishment, it should express its will in language that need not deceive the common mind. Every man should be able to know with certainty when he is committing a crime.").

45. Thornhill v. State of Alabama, 310 U.S. 88, 95 (1940).

46. Papachristou v. City of Jacksonville, 405 U.S. 156, 162 (1972) (explaining that determining whether a statute is void for vagueness requires a two-fold investigation).

47. Note, *The Void-for-Vagueness Doctrine in the Supreme Court*, 109 U. PA. L. REV. 67, 81 (1960). *See also* Andrew E. Goldsmith, *The Void-For-Vagueness Doctrine in the Supreme Court, Revisited*, 30 AM. J. CRIM. L. 279 (2003).

48. *See* Samuel A. Terilli, *Inartful Drafting Does Not Necessarily a Void, as Opposed to a Vague, Statute Make--Even under the First Amendment: The Eleventh Circuit Applies Common Sense to "Common Understanding" in Void-For-Vagueness Challenges to Lobbying Regulations*, 63 U. MIAMI L. REV. 793 (2009). He writes:

> Although overbreadth and void-for-vagueness arguments often appear in tandem, as happened in FAPLI v. Division, this Article examines the Eleventh Circuit's void-for-vagueness ruling only and is so limited because the issue of ambiguity lay at the heart of both arguments. The FAPLI appellants argued that the Florida lobbying laws, by virtue of their general definitions and structure, could not be understood as a matter of common knowledge and also could not, therefore, be narrowed to apply only to direct communications with covered state officials to influence state policy or legislation. Somewhat ironically, the appellants complained of vague standards under a law aimed at indirect as well as direct expenditures for lobbying as a way of maintaining their own ability to use vague

challenges, void-for-vagueness challenges do not mean that laws with less-than-artful drafting are always invalidated; rather,

> [u]nder the First Amendment overbreadth doctrine, an individual whose own speech or conduct may be prohibited is permitted to challenge a statute on its face 'because it also threatens others not before the court-those who desire to engage in legally protected expression but who may refrain from doing so rather than risk prosecution or undertake to have the law declared partially invalid.'[49]

In criminal law, it is axiomatic that "[i]t is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."[50] While the payment of a fine is not the same type of behavior as that which might constitute a crime, it is nonetheless behavior that should not be subject to arbitrary regulation because the failure to pay a fine could lead to criminal punishment.

As the U.S. Supreme Court has written, "[w]here a statute's literal scope, unaided by a narrowing state court interpretation, is capable of reaching expression sheltered by the First Amendment, the [void-for-vagueness] doctrine demands a greater degree of specificity than in other contexts."[51] Moreover, "[a] statute can be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement."[52] A provision in an ordinance that gives the government the option to accept coins as payment of fines from some people and to refuse the same form of payment from others is clearly arbitrary and arguably not precise enough to pass muster under the U.S. Constitution.

IV. 1983 LITIGATION

If the Springfield City Clerk should refuse to accept coins pursuant to the new ordinance, the people who are not permitted to pay their fines with

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> or indirect modes of influence upon or communication with government officials (i.e., by influencing government indirectly through the public and press). The overbreadth argument, therefore, shared the same root as the void-for-vagueness challenge-- ambiguous language.

Id. at 795 (citations omitted).

49. Bd. of Airport Comm'rs of L.A. v. Jews for Jesus, Inc., 482 U.S. 569, 574 (1987) (quoting Brockett v. Spokane Arcades, Inc., 472 U.S. 491, 503 (1985)).

50. Grayned v. City of Rockford, 408 U.S. 104, 108 (1972).

51. Smith v. Goguen, 415 U.S. 566, 573 (1974).

52. Hill v. Colorado, 530 U.S. 703, 732 (2000) (citing Chicago v. Morales, 527 U.S. 41, 56–57 (1999)).

coins should be able to sue the Clerk pursuant to 42 U.S.C. § 1983 for violating their civil rights.[53] This statute provides a civil remedy for violations of all "rights, privileges, or immunities secured by the Constitution and laws [of the United States]."[54] "Thus, Section 1983 provides a 'broad remedy for violations of federally protected civil rights.'"[55]

Under certain circumstances, however, a government official may escape Section 1983 liability because that official is entitled to "qualified immunity."[56] "An official sued under Section 1983 is entitled to qualified immunity, unless it is shown that the official violated a statutory or constitutional right that was clearly established at the time of the challenged conduct."[57] In *Barboza v. D'Agata*, an assistant district attorney in Sullivan County, New York, determined that a citizen who had been issued a speeding ticket committed aggravated harassment when he defaced the ticket-payment form and also wrote profanity on the form.[58] The assistant prosecutor conducted a minimal investigation into the circumstances surrounding the ticketed individual's actions prior to setting in motion the events that ultimately led to the ticketed individual's arrest.[59] The arrestee sued the assistant prosecutor and others for violating his civil rights, and the attorney asserted that he had qualified immunity because of his office; however, the court disagreed.[60] The court was absolutely clear: "[P]laintiff's arrest violated his clearly established constitutional right to engage in and be free from arrests because of protected speech."[61]

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53. 42 U.S.C. § 1983 (2016).

54. *Id.*

55. Basham v. McBride, No. 5:04-cv-01335, 2008 WL 2595686, at *9 (S.D.W. Va. June 26, 2008) (quoting Monell v. Dep't of Soc. Servs., 436 U.S. 658, 685 (1978)). *See also* Vickowski v. Hukowicz, 201 F. Supp. 2d 195, 198 (D. Mass. 2002) (former police officer unsuccessfully sought damages under 42 U.S.C. §1983 for alleged retaliation and discrimination under the Equal Protection Clause and the First Amendment); Thomas v. Farmer, 573 F. Supp. 128, 129-30 (S.D. Ohio 1983) (court denies motion to dismiss a 1983 action by a teacher who claimed that, because of a speech made by him at a board meeting, defendants had made defamatory statements about the teacher and attempted to have him suspended).

56. Pearson v. Callahan, 555 U.S. 223, 231 (2009) ("The doctrine of qualified immunity protects government officials 'from liability for civil damages insofar as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known.'" (quoting Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982))).

57. Barboza v. D'Agata, 151 F. Supp. 3d 363, 369 (S.D.N.Y. 2015) (citing Plumhoff v. Rickard, 134 S. Ct. 2012, 2023 (2014)).

58. *Barboza*, 151 F. Supp. 3d at 367.

59. *Id.* at 367–68.

60. *Id.* at 375.

61. *Id.*

A city clerk who refuses to accept U.S. currency to pay a fine that is being paid with coins as a form of protest would likely find himself or herself in the very same position as the assistant prosecutor in *Barboza*.[62] As this essay has demonstrated, payments to the government with U.S. coins are permitted by law and exercising free-speech rights is, without a doubt, a clearly-established constitutional right. As a consequence, it is doubtful that Springfield officials who refuse to accept coins for payment of a fine could escape liability through qualified immunity.

In addition to a potential 1983 action against the Clerk, citizens who are not permitted to pay fines with coins may also have a cause of action against the City of Springfield. Municipal liability under Section 1983 is rarely allowed because Congress did not intend for municipalities to be liable under the statute unless the action is pursuant to an official municipal policy that caused a constitutional tort.[63] As the *Barboza* court explained:

> Thus, to prevail on a claim against a municipality under Section 1983 based on acts of a public official, a plaintiff is required to prove actions taken under color of law, deprivation of a constitutional or statutory right, causation, damages, and that an official policy of a municipality caused a constitutional injury.[64]

In the matter of the City of Springfield's ordinance, which appears to deny some citizens the opportunity to pay fines with U.S. coins, a plaintiff would have little difficulty demonstrating (1) that a clerk's refusal to accept coins was under "color of law," a "deprivation of a constitutional . . . right" to protest and (2) that the clerk's actions were pursuant to an ordinance of the City of Springfield.[65] Consequently, the City might be exposed to liability in addition to its municipal staff.

V. CONCLUSION

Freedom of speech, including speech that takes the form of protest, is one of the most cherished rights guaranteed to the citizens of the United States in the Constitution. There are times, however, when free-speech rights must give way to other rights and privileges or to the government's

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62. *Id.* at 367–68.

63. Monell v. Dep't of Soc. Servs., 436 U.S. 658, 694 (1978) ("We conclude, therefore, that a local government may not be sued under § 1983 for an injury inflicted solely by its employees or agents. Instead, it is when execution of a government's policy or custom, whether made by its lawmakers or by those whose edicts or acts may fairly be said to represent official policy, inflicts the injury that the government as an entity is responsible under § 1983.").

64. *Barboza*, 151 F. Supp. 3d at 376.

65. *Id.*

need to function in the interests of all citizens. When there is conflict, the courts have repeatedly held that the government may not limit speech unless the speech constitutes obscenity, child pornography, defamation, incitement to violence, or true threats of violence.[66]

The payment of fines, taxes, or penalties to the government can provide an outlet for an unhappy citizen to express his or her dissatisfaction with government by making payment with coins instead of a check, paper currency, or credit card. That form of protest is protected speech and should not be abridged, particularly when the restriction on free speech is only because it inconveniences the government officials who will receive the payment. The U.S. Constitution does not condone such governmental infringement on a fundamental right, and the Springfield, Illinois ordinance that limits a citizen's ability to pay the government with coins should be repealed.

66. *See, e.g.,* Terminiello v. Chicago, 337 U.S. 1, 4 (1949); United States v. Roth, 237 F.2d 796, 799 (2nd Cir. 1956); Collin v. Smith, 447 F. Supp. 676, 702 (N.D. Ill. 1978).